

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 813 of 2000

WITH

SPECIAL CIVIL APPLICATION No 7888 of 2000

AND

CIVIL APPLICATION No 1565 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

PRADEEP VASUDEV SEERNANI

Versus

AMC

Appearance:

MR KV SHELAT for Petitioner in SCA 813/2000

MR PK Pancholi for Petitioner in SCA 7888/2000

MR PRASHANT G DESAI for Respondent AMC

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: /11/2000

CAV JUDGEMENT

1. Rule. Respective counsel for the respondents

waives service of rule in both the petitions. Both these petitions involve same questions of fact and law, and therefore, these petitions are disposed of by this common judgment.

2. The petitioner Pradeep Vasudev Seernani filed Special Civil Application No. 813 of 2000 for a direction on the respondent Ahmedabad Municipal Corporation for allotment of Shop No. 34 constructed under Nathalal Zagda Fly Over Bridge, Ahmedabad. The respondent Ahmedabad Municipal Corporation initially on 25-4-1998 issued an advertisement inviting offers for allotment of 70 shops. In pursuance of the aforesaid advertisement some tenders were submitted and 11 shops were allotted to 11 independent persons. No one submitted tender in respect of Shop No. 34. Thereby the Municipal Corporation of Ahmedabad issued a further advertisement on 23-1-1999. The petitioner submitted tender for allotment of Shop No. 62 after depositing Rs.42,750-00 being 25 % of the offered amount. During second advertisement no one submitted any tender for Shop No. 34, and only one shop was allotted to one tenderer. Therefore the respondent Corporation issued third advertisement on 17-5-1999, but no one offered any price for Shop No. 34. The petitioner while taking occupation of Shop No. 62 found that, there were some construction defects and so the petitioner applied to the respondent Corporation for allotment of shop No. 34. The respondent Corporation while issuing all the three advertisements intimated that the minimum price for Shop No. 34 will be Rs.1,80,000-00. Since no offer has been received in respect of shop No. 34, the Municipal corporation considered prayer of the petitioner for allotment of shop No. 34 by cancelling allotment of shop No. 62. However the Corporation directed the petitioner to pay an additional amount of Rs.1,84,308-00, apart from the deposit of Rs.42,750-00 made by the petitioner while submitting the tender.

3. It is contended by Mr. K.V. Shelat, learned counsel appearing on behalf of the petitioner that, the minimum price for allotment of shop No. 34 has been indicated in all the advertisements as Rs.1,80,000-00 and therefore the respondent Corporation have no right to claim Rs.,2,27,050-00. Mr. Shelat accordingly submitted that, when the Corporation has allowed the change and in view of the fact that no offer has been submitted by any person for allotment of shop No. 34, the Corporation should have allotted the shop No. 34 to the petitioner with the price indicated in the advertisement, that is Rs.1,80,000-00. Mr. Shelat submitted that, the

petitioner submitted a representation for relaxing the amount, but instead of repeated requests and reminders, respondent Corporation did not lower the price and insisted that if the petitioner wants allotment of Shop No. 34 then he will be required to pay a sum of Rs.2,27,050-00. The respondent Corporation did not agree with the prayer of the petitioner to allot Shop No. 34 at a price of Rs.1,80,000-00 as indicated in the advertisements, and since the petitioner did not deposit a total sum of Rs.2,27,050-00 for shop No. 34, the earnest money amounting to Rs.42,750-00 deposited by the petitioner have been forfeited by the respondent Corporation.

4. Thereafter the Corporation issued 4th advertisement for allotment of the remaining shops. In pursuance of the 4th advertisement the petitioner of Special Civil Application No. 7888 of 2000, Ajitsinh Bhavansinh Jhala offered an amount of Rs.1,98,000-00 for allotment of Shop No.34, and deposited a sum of Rs.49,500-00 by bank draft. The tender was opened on 17-2-2000. The petitioner accordingly requested the respondent Corporation for allotment of Shop No. 34 by letter dated 19-4-2000. The respondent Corporation intimated that, because of the pendency of Special Civil Application No. 813 of 2000 they are not in a position to allot shop No. 34 of the petitioner of Special Civil Application No. 7888 of 2000. It is contended by Mr. Pancholi, learned counsel appearing on behalf of the petitioner in Special Civil Application No. 7888 of 2000 that, after getting the aforesaid letter from the respondent Corporation, the petitioner came to know about pendency of Special Civil Application No. 813 of 2000. It is an admitted fact that, when the fourth advertisement was issued by respondent Corporation, the petitioner of Special Civil Application No. 813 of 2000 filed civil application No. 1565 of 2000 for allotment of Shop No. 34 and also for a direction not to allot Shop No. 34 to any other person, except the petitioner. This Court, while issuing notice in civil application granted ad interim relief directing the petitioner to deposit Rs.1,37,250-00 with respondent Corporation, that is the balance amount of Rs.1,80,000-000, and the said order was communicated to the respondent Corporation on 15-2-2000. Accordingly the said amount has been deposited by the petitioner vide cheque dated 18-2-2000 with the respondent Corporation. The fourth tender was opened on 17-2-2000. Initially the respondent Corporation did not accept the amount of Rs.1,37,250-00 as ordered by this Court and therefore the petitioner filed contempt petition and thereafter the respondent

Corporation accepted the amount on 28-2-2000.

5. It is an admitted fact that, in pursuance of the 1st, 2nd and 3rd advertisements no tender was received from any person in respect of shop No. 34. It is also an admitted fact that the petitioner of Special Civil Application No. 813 of 2000 submitted his tender for allotment of shop No. 62. After seeing the condition of shop No. 62, petitioner submitted an application/representation for allotment of shop No. 34 in place of shop No. 62. Since no one offered any price for allotment of shop no. 34, the respondent Corporation by resolution accepted the prayer of the petitioner for allotment of shop no. 34 instead of shop no. 62. The dispute between the petitioner and respondent Corporation is that the Corporation was demanding a sum of Rs.2,27,058-00 for allotment of shop no. 34 to the petitioner, whereas the petitioner claims that in the advertisements the respondent Corporation has indicated the price for shop no. 34 at Rs.1,80,000-00. Mr. Shelat, learned counsel appearing on behalf of the petitioner of Special Civil Application No. 813 of 2000 submitted that, since no offer has been accepted by the respondent Corporation in respect of shop No. 34, there is no reason for the Corporation to claim Rs.2,27,050-00 for shop no. 34 from the petitioner. It is also contended by Mr. Shelat that, when the price have been indicated in all the earlier three advertisements at Rs.1,80,000-00 for shop No. 34, the Corporation cannot claim higher than the amount indicated by the Corporation in the advertisement . It is also submitted by Mr. Shelat that, the Corporation being in advantageous position has arbitrarily fixed the price of shop No. 34 at Rs.2,27,050-00 from the petitioner. It is also contended by Mr. Shelat that, even in the 4th advertisement when petitioner of Special Civil Application No. 7888 of 2000 offered price for shop No.34 he has quoted a total sum of Rs.1,98,000-00. Accordingly Mr. Shelat submitted that, according to the market value, shop No. 34 cannot be sold out by respondent Corporation at Rs.2,27,050-00. It is accordingly submitted by Mr. Shelat that, since the Corporation has allowed the prayer of the petitioner for allotment of shop No. 34 instead of shop no. 62, it is obligatory on the part of the respondent Corporation to allot shop No. 34 to the petitioner at Rs.1,80,000-00 which is the value indicated by the Corporation in all the three advertisements.

6. Mr. Prashant Desai, learned counsel appearing on behalf of the respondent Corporation submitted that the

petitioner of Special Civil Application No. 813 of 2000 was intimated by the Corporation that if he wants allotment of shop No. 34, he will have to pay a total amount of Rs.2,27,050-00. It is also submitted by Mr. Desai that, since the petitioner has not paid the increased amount, the earnest money of Rs.42,750-00 deposited with Corporation has been forfeited. Mr. Desai has contended that, in the advertisement the Corporation has quoted the minimum price for the shop at Rs.1,80,000-00 for allotment of shop No. 34. It is contended by Mr. Desai that, it is not obligatory on the part of the Corporation to allot shop No. 34 at the price indicated in the advertisement. It is also contended by Mr. Desai that, independent of the amount indicated in the advertisement, the Corporation is at a liberty to fix the market price for allotment of shop no. 34. It is also contended by Mr. Desai that, according to the market value the shop no. 34 can fetch an amount of Rs.2,27,050-00 and accordingly the Corporation has demanded the said amount from the petitioner.

7. I cannot agree with the submissions of Mr. Desai in view of the fact that, during the first three advertisements no one offered any price for shop no. 34. Even in the 4th advertisement the petitioner of Special Civil Application No. 7888 of 2000 offered a price of Rs.1,98,00,000-00 and apart from the petitioner of Special Civil Application No. 7888 of 2000, no one offered more amount than the said petitioner. Consequently I am of the view that the Corporation has arbitrarily fixed allotment price from the petitioner of Special Civil Application No. 813 of 2000 at Rs.2,27,050-00 and the Corporation has failed to show any reasonable basis by which it arrived at the said price. Since there was no offer till 3rd advertisement for allotment of shop no. 34 about the minimum price fixed by the Corporation, I am of the view that the Corporation should have allotted shop No.34 at the minimum price fixed by the Corporation.

8. Mr. Pancholi, learned counsel appearing on behalf of petitioner in Special Civil Application No. 7888 of 2000 submitted that, the petitioner offered price at Rs.1,98,000-00 for shop No. 34 in pursuance of 4th advertisement and apart from the petitioner there was no other person who offered price for shop No. 34. Mr. Pancholi accordingly submitted that, since there is no other tenderer except the petitioner of Special Civil Application No. 7888 of 2000 in respect of shop no. 34, the Corporation is under an obligation to allot shop no. 34 to the petitioner of Special Civil Application No.

7888 of 2000 at a price of Rs.1,98,000-00. During the pendency of the case this Court directed the petitioner in Special Civil Application No. 813 of 2000 to deposit the amount, that is the balance amount of Rs.1,80,000-00 to the Corporation, and the Corporation has accepted the amount in pursuance of the order of this Court on 28-2-2000. Since a litigation was pending in respect of allotment of shop No. 34, by offering the price of Rs. 1,98,000-00 for shop no. 34, I do not think the petitioner of Special Civil Application No. 7888 of 2000 has acquired any right for allotment of shop no. 34. The subsequent actions of the Corporation are subject to the result of Special Civil Application No. 813 of 2000. Since by offering a price of Rs.1,98,000-00 for shop no. 34 the petitioner has not acquired any right for allotment, I am of the view that result of Special Civil Application No. 813 of 2000 will be binding on the Corporation as well as any person claiming through the Corporation for allotment of shop No. 34. It is true that the respondent Corporation claimed a sum of Rs.2,27,050-00 from the petitioner of Special Civil Application No. 813 of 2000 for allotment of shop no. 34 instead of shop no. 62, but such a claim by the respondent Corporation do not appear to be legal. It is true that the Corporation is not bound to allot any shop at the minimum price indicated in the advertisement, but the Corporation should consider the market value of such shops. It appears that, in pursuance of the 4th advertisement an offer was received by the respondent Corporation at Rs.1,98,000-00 for allotment of shop no. 34. Consequently I am of the view that the decision of the Corporation claiming a sum of Rs.2,27,050-00 for allotment of shop no. 34 from petitioner of Special Civil Application No. 813 of 2000 is unreasonable and I also believe that the Corporation should have claimed a sum of Rs.1,98,000-00 for allotment of shop no. 34.

9. Having regard to the facts & circumstances of the case, I am of the view that the petitioner of Special Civil Application No. 813 of 2000 should pay a sum of Rs.1,98,000-00 for allotment of shop No.34. It appears that the petitioner has already deposited a sum of Rs. 42,750-00 while offering the price for allotment of shop No. 62 and as per order of this Court, he has also paid a sum of Rs.1,37,250-00 to the Corporation. Now the petitioner in Special Civil Application No. 813 of 2000 is directed to pay the balance amount to the Corporation within a period of 30 days from today, i.e. RS.18,000-00 making the total amount at Rs.1,98,000-00. It is made clear that for allotment of shop No. 34 the petitioner of Special Civil Application No. 813 of 2000 shall pay

the total sum of Rs.1,98,000-00. On deposit of the balance amount of Rs.18,000-00 within one month from today, the respondent Corporation shall allot Shop No. 34 to the petitioner of Special Civil Application No. 813 of 2000, within two weeks from the date of deposit of the amount and handover possession of Shop No. 34 to the said petitioner.

10. Accordingly Special Civil Application No. 813 of 2000 is allowed. Rule made absolute. Special Civil Application No. 7888 of 2000 fails and it is dismissed. Rule discharged in this petition. No order is necessary in Civil Application No. 1565 of 2000, since the main matter being Special Civil Application No. 813 of 2000 is allowed. I make no order as to costs.

Dt: 23-11-2000

(P.K. Sarkar, J)

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